

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIVERSIFIED LENDERS, LLC,

Plaintiff,

V.

AMAZON LOGISTICS, INC., and
VERTICAL HOLDINGS UNLIMITED,
LLC,

Defendants

Cause No. C16-1232RSL

ORDER DENYING MOTION TO
COMPEL

AMAZON LOGISTICS, INC..

Cross-Claim Plaintiff.

V.

VERTICAL HOLDINGS UNLIMITED, LLC

Cross-Claim Defendant.

This matter comes before the Court on “Plaintiff Diversified Lenders, LLC’s Motion to Compel Defendant Amazon Logistics, Inc. to Provide a Better Response to Interrogatory No. 5, and Motion to Preclude Defendant from Utilizing Fed. R. Civ. P. 33(d) in Lieu of Responding to Interrogatories, and Request for Sanctions.” Dkt. # 73. In this litigation, plaintiff seeks to recover amounts due on 73 separate invoices that it alleges are outstanding and unpaid. Dkt. # 67 at ¶ 13.

ORDER DENYING MOTION TO COMPEL

1 In its answer to the Amended Complaint, defendant denied that the specified invoices were
2 legitimate or accurate. Dkt. # 76 at ¶ 13. Plaintiff served a single interrogatory asking for all
3 facts which support the “denial of paragraph 13 of the Complaint, including without limitation,
4 which invoices Amazon contends are not legitimate, which invoices Amazon contends are not
5 accurate, what information contained on the invoices is not accurate” and copies of all
6 documents that support the response. Dkt. # 73-1 at 13.

7 Pursuant to Fed. R. Civ. P. 33(a), a party “may serve on any other party no more than 25
8 written interrogatories, including all discrete subparts.” The 1993 Advisory Committee Notes
9 explains that the rule is intended to prohibit parties from “joining as ‘subparts’ questions that
10 seek information about discrete separate subjects,” but suggests that a single inquiry seeking
11 information about, for example, particular types of communications counts as only one
12 interrogatory even though a complete response will require numerous statements of fact
13 regarding the time, place, participants, and content of the communication. Courts have
14 formulated various tests for determining when subparts are actually a separate interrogatory.
15 Interrogatory subparts are counted as a single interrogatory if “they are logically or factually
16 subsumed within and necessarily related to the primary question.” Safeco of Am. v. Rawstron,
17 181 F.R.D. 441, 445 (C.D. Cal. 1998). “A single question asking for several bits of information
18 related to the same topic counts as one interrogatory. (E.g., ‘State the name, address and
19 telephone number of each person present at the meeting.’)” Hasan v. Johnson, No. 1:08-cv-
20 00381-GSA-PC, 2012 WL 569370, at *4 (E.D. Cal. Feb. 21, 2012). If, however, the
21 interrogatory poses a question that can be answered fully and completely without answering the
22 second question, then the subparts are discrete. Walech v. Target Corp., No. C11-0254RAJ,
23 2012 WL 1068068, at *3 (W.D. Wash. Mar. 28, 2012); Estate of Manship v. U.S., 232 F.R.D.
24 552, 555 (M.D. La. 2005). Similarly, an inquiry requesting the same information regarding
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1 disparate claims, defenses, or events counts as multiple interrogatories. Jovanovich v. Redden
2 Marine Supply, Inc., No. C10-0924RSM, 2011 WL 4459171, at *3 (W.D. Wash. Sept. 26,
3 2011); Collaboration Props., Inc. v. Polycom, Inc., 224 F.R.D. 473, 475 (N.D. Cal. 2004).
4 “Since many of these formulations are difficult to apply or perhaps even conflicting, some courts
5 have taken a ‘pragmatic approach,’ looking to see if an interrogatory threatens the purpose of
6 Rule 33 by combining into one interrogatory several lines of inquiry that should be kept
7 separate.” Paananen v. Cellco Partnership, 2009 WL 3327227, at *2 (W.D. Wash. Oct. 8, 2009)
8 (citing Willingham v. Ashcroft, 226 F.R.D. 57, 59 (D.D.C. 2005), and Banks v. Office of Senate
9 Sergeant-at-Arms, 222 F.R.D. 7, 10 (D.D.C. 2004)).

10 With these evaluative tools in mind, the Court finds that Interrogatory No. 5 contains 73
11 discrete subparts. With regards to each of the 73 contested invoices, plaintiff wants to know
12 whether Amazon contends that the invoice is illegitimate or inaccurate, what information in each
13 invoice is inaccurate, and a narrated list of all of the documents Amazon relied upon in reaching
14 its determination.¹ Defendant would have to perform a separate document review, analysis, and
15 response for each of the 73 invoices. In the language of the cases cited above, plaintiff is
16 essentially requesting the same information regarding disparate transactions, and a complete
17 answer regarding Invoice # 1014, for example, could be provided without addressing the
18 problems with or documents related to Invoice # 1047.

19 Plaintiff argues that its interrogatory should be counted as one interrogatory because “it is
20 a simple and straightforward request for the facts supporting Amazon’s denial of a single
21 paragraph [] in Diversified’s Complaint” Dkt. # 80 at 5. Under this theory of Rule 33(a), a
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24 ¹ The relief plaintiff seeks in this motion exceeds any plausible reading of Interrogatory No. 5,
25 which asks defendant to “Identify each and every Document and/or ESI that You have relied upon in
26 support of Your answer to this Interrogatory.” Dkt. # 73-1 at 13. Because Interrogatory No. 5 asks about
all 73 invoices, identifying the relevant documents en masse was an appropriate response.

1 party would be able to avoid the limits on the number of interrogatories as long as it could
2 formulate a single, overarching question regardless of how many discrete subtopics are
3 contained within it. The fact that plaintiff identified 73 different invoices in ¶ 13 of the
4 complaint and could pose questions by reference to that paragraph number does not change the
5 fact that it is asking a series of questions regarding each of those separate and distinct invoices.
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7 Absent a stipulation or order of the Court permitting more than 25 interrogatories,
8 defendant objected to Interrogatory No. 5 as unauthorized and unduly burdensome. These
9 objections are well-taken, and Amazon would have been within its rights to provide the
10 requested information as to only sixteen of the contested invoices.² Instead, Amazon provided all
11 documents related to the 73 invoices in a text searchable format, including all versions of the
12 invoices and related correspondence. It also supplied summary spreadsheets that state how
13 Amazon coded the invoice (“Canceled,” “On Hold,” “Double Paid,” *etc.*) and that provide notes
14 regarding each. With regards to Invoice # 1047, for example, the spreadsheet indicates that it
15 was “Double Paid” and “PAID TWICE: Week 33 already double paid via invoices 1041
16 (9/9/2015) and 1044 (9/11/2015).” Dkt. # 78 at 25. No more is required under Rule 33. To the
17 extent plaintiff had questions regarding the meaning of certain phrases or was unable to follow
18 the notes through the documents provided, defense counsel and defendant’s Rule 30(b)(6)
19 witness were available to assist. Defendant’s willingness to provide a substantive, non-
20 burdensome response does not constitute a waiver, nor will it be compelled to create a separate
21 narrative for 73 transactions under the guise of a single interrogatory.
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24 For all of the foregoing reasons, plaintiff’s motion to compel, to preclude, and for
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26 ² Plaintiff’s first set of interrogatories contained nine questions. Dkt. # 73-1 at 7-17.

1 sanctions is DENIED.
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5 Dated this 20th day of June, 2017.
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Robert S. Lasnik
Robert S. Lasnik
United States District Judge